

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KATY SMITH and JANE DOE, a Minor, §
§
Plaintiffs, §
§
VS. § CIVIL ACTION NO. SA-22-CV-1051-FB
§
THE COMAL INDEPENDENT SCHOOL §
DISTRICT, §
§
Defendant. §

ORDER ACCEPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on August 4, 2023 (docket #21), concerning Defendant's Motion to Dismiss filed on December 13, 2022 (docket #9). According to the CM/ECF system, the Report and Recommendation was electronically transmitted to all the parties on August 4, 2023. To date, the docket reflects no objections to the Report and Recommendation have been received.¹

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted

¹ Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing." FED. R. CIV. P. 5(b)(2)(C). If service is made by electronic means, "service is complete upon transmission." *Id.* at (E). When the mode of service is by electronic means, three days are no longer added to the time period to act after being served. *See Heverling v. McNeil Consumer Pharmaceuticals, Co.*, Civil Action No. 1:17-CV-1433, 2018 WL 1293304 at *2 n.3 (M.D. Pa. Mar. 13, 2018) ("On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Civil Procedure. In pertinent part, the Court amended Rule 6(d) to remove 'electronic means' as a mode of service triggering an additional three days to act when a responsive period commences upon service. *See* FED. R. CIV. P. 6, advisory committee's note to 2016 amendment. The amendments took effect on December 1, 2016.").

pursuant to 28 U.S.C. § 636(b)(1) such that Defendant's Motion to Dismiss (docket #9) shall be GRANTED such that Plaintiffs' § 1983 and gross negligence claims shall be DISMISSED WITH PREJUDICE; Plaintiffs' Title IX claim shall be DISMISSED WITHOUT PREJUDICE; and Plaintiffs shall be given an opportunity to amend their complaint to sufficiently plead facts regarding the lacking elements of the claim.

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on August 4, 2023 (docket #21), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendant's Motion to Dismiss (docket #9) is GRANTED such that Plaintiffs' § 1983 and gross negligence claims are DISMISSED WITH PREJUDICE and Plaintiffs' Title IX claim is DISMISSED WITHOUT PREJUDICE. IT IS FURTHER ORDERED that Plaintiffs shall have an opportunity to amend their complaint only as to the Title IX claim which has been dismissed without prejudice.

IT IS FURTHER ORDERED that if Plaintiffs choose to amend their Complaint as set forth in this Order, they shall file their amended complaint in accordance with this Order and the Report and Recommendation **on or before Tuesday, September 12, 2023**. If no amended complaint is filed by September 12, 2023, the Title IX claim also will be dismissed with prejudice, a final judgment will be entered by this Court, and the case will be closed.

It is so ORDERED.

SIGNED this 27th day of August, 2023.


FRED BIERY
UNITED STATES DISTRICT JUDGE